

RETURN DATE: July 23, 2019	:	
	:	SUPERIOR COURT
COMMISSION ON HUMAN RIGHTS AND	:	
OPPORTUNITIES EX REL.	:	
ABIGAIL T. GILBERT AND	:	JUDICIAL DISTRICT OF NEW HAVEN
CHRISTIAN T. GILBERT	:	
	:	AT MERIDEN
v.	:	
	:	
TOWN OF WALLINGFORD, and its	:	
ZONING BOARD OF APPEALS	:	May 31, 2019

COMPLAINT PETITION

TO THE SUPERIOR COURT to be held at Meriden, within and for the Judicial District of New Haven, comes the Commission on Human Rights and Opportunities on behalf of Abigail T. Gilbert and Christian T. Gilbert, who complain and say:

1. The Plaintiff Commission on Human Rights and Opportunities ("CHRO" and/or "Commission") is an agency of the State of Connecticut created by Connecticut General Statutes ("CONN. GEN. STAT.") § 46a-52 and operating pursuant to Chapter 814c of the Connecticut General Statutes, with its principal office at 450 Columbus Boulevard, Suite 2, Hartford, Connecticut 06103.

2. The CHRO brings this civil action on behalf of the Relators, Christian T. Gilbert ("Mr. Gilbert" and/or "Relator") and Abigail T. Gilbert ("Mrs. Gilbert" and/or "Relator") and pursuant to CONN. GEN. STAT. §§ 46a-82(b), 46a-83(g) and 46a-89(b).

3. Mr. Gilbert and Mrs. Gilbert reside at 4 Doris Street, in Wallingford Connecticut 06492.

4. The Defendants are the Town of Wallingford and its Zoning Board of Appeals. The Defendants' address is Wallingford Town Hall, 45 South Main Street,

Wallingford, Connecticut 06492. The Town Clerk is Barbara Thompson, located at 45 South Main Street, Room #108, Wallingford, Connecticut 06492.

5. Upon information and belief, Mr. Gilbert and Mrs. Gilbert are the owners of their residence at 4 Doris Street, Wallingford, Connecticut 06492-3219 (the "Property").

6. On or about June 29, 2018, Mr. and Mrs. Gilbert filed complaint numbers 1850189 and 1850190 with the CHRO pursuant to CONN. GEN. STAT. § 46a-82 alleging housing discrimination.

7. On February 21, 2019, the CHRO, through its case investigator, Diane Carter, found reasonable cause to believe a discriminatory housing practice had occurred, pursuant to CONN. GEN. STAT. § 46a-83. By letter dated March 6, 2019 and received March 6, 2019, Defendants Town of Wallingford and its Zoning Board of Appeals elected to proceed by civil action in Superior Court pursuant to CONN. GEN. STAT. § 46a-83(e), rather than to an administrative hearing pursuant to CONN. GEN. STAT. § 46a-84. Exhibit "A".

8. Pursuant to a vote taken at the May 8, 2019 CHRO Commission meeting, the Commission authorized that this petition be commenced and that certain forms of relief be sought pursuant to CONN. GEN. STAT. § 46a-89(b). CHRO Commissioner Edward Mambruno's Affidavit is attached hereto as Exhibit "B".

9. The discriminatory practice which is the subject of this action, and which is the subject of Mr. and Mrs. Gilbert's complaints, occurred in Wallingford in the Judicial District of New Haven.

10. Upon information and belief, the Defendants have violated CONN. GEN. STAT. § 46a-64c(a) *et seq*, and CONN. GEN. STAT. § 46a-58(a) pursuant to allegations

of violation of the Fair Housing Act 42 U.S.C 3601 et seq. (FHA) and the Americans with Disabilities Act of 1990 as amended, 42 U.S.C. 12101 et seq. (ADA), by refusing to grant the Gilberts' application for Zoning Variance and to by failing to engage in the interactive process in connection with Mr. and Mrs. Gilbert's application for a Zoning Variance which had been sought to make their household accessible to Mr. Gilbert's progressing condition of multiple sclerosis, as a reasonable accommodation for his disability.

- a. Upon information and belief, Christian T. Gilbert is an individual with a physical disability (multiple sclerosis) and a mental disability.
- b. Mr. Gilbert and his wife, Abigail T. Gilbert, live at 4 Doris Street, Wallingford, Connecticut 06492-3219. The house is a single family 946 square foot 3-bedroom home.
- c. The Defendants are the Town of Wallingford and the Town of Wallingford's Zoning Board of Appeals. The Defendant's address is Wallingford Town Hall, located at 45 South Main Street, Wallingford, Connecticut 06492.
- d. The Town of Wallingford's Zoning Board of Appeals hears appeals to vary the Zoning Regulations based on hardships that the Regulations may impose on the citizens of Wallingford, thereby allowing the owner to make any "reasonable use" of the land which may inadvertently be prevented by the Zoning Regulations. In addition, the Zoning Board of Appeals "to determine and vary the application of the zoning bylaws, ordinances or regulations in harmony with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such bylaws, ordinances or regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured, provided that the zoning regulations may specify the extent to which uses shall not be permitted by variance in districts in which such uses are not otherwise allowed." (Conn. Gen. Stat. § 8-6(a)(3)) Powers and duties of board of appeals).
- e. Mr. and Mrs. Gilbert own the property at 4 Doris Street, Wallingford, Connecticut 06492-3219. They have owned the property for 20 years.
- f. Mr. Gilbert has physical mobility issues and his medical condition exasperates his anxiety.

- g. In June 2018, Mr. and Mrs. Gilbert sought, through application number 18-009, a Variance for front yard of 14.6 feet, side yard of 4.4 feet and building coverage of 26% to allow them to construct an addition/garage at 4 Doris Street, Wallingford, Connecticut. The Variance was for constructing a ramp (not visible to the street-within the garage, to assist Mr. Gilbert with his medical condition and observably to allow safe passage in any of New England's inclement weather). The other front yard, side yard reasonable accommodation requests were to afford the opportunity to widen the interior of the house (hallways, entrances to rooms and the enlargement of a room and redesign of the first floor to make it accessible) in the management of Mr. Gilbert's disability-related condition (physical mobility issues and mental disability).
- h. In June 2018, Defendants denied Mr. Gilbert's application. Upon information and belief, Mr. Gilbert believed that some of the Wallingford Zoning Board of Appeals' comments, made on the record, denied him a fair and impartial hearing on the merits. In point of fact Mr. Gilbert believes that the comments demonstrated that they made decisions regarding his application for variance, disregarding his medical condition or prognosis but considering more generalized information: "I have some family members who share your medical condition and they don't need this type of a modification, so, you won't need the Variance for what you are seeking"; Zoning Board of Appeals Member and Vice-Chair Raymond Rys said after the Special Meeting, "the only real reason that I objected was because of the building coverage Variance."
- i. Zoning Board of Appeals Member Sam Carmody stated, "I implore all of my fellow members to support the Gilbert Application for the three zoning variances."
- j. By denying Mr. and Mrs. Gilbert's request for a variance, they were denied a Reasonable Accommodation that is necessary to afford Mr. and Mrs. Gilbert an equal opportunity to use and enjoy their dwelling.
- k. Mr. and Mrs. Gilbert claim that they need the Variance because of Mr. Gilbert's disability (multiple sclerosis-related physical mobility issues and mental disability). Also, other citizens of Wallingford, in the same locale, have had more substantial Zoning Variances approved. Consequently, the interpretation/implementation of the Zoning Regulations by Defendant has made the zoning regulations impose a unique burden or hardship on Mr. and Mrs. Gilbert.
- l. Mr. and Mrs. Gilbert have not created the hardship through their own action; exists due to Mr. Gilbert's medical condition, Mr. and Mrs. Gilbert require a reasonable accommodation of the Town's zoning bylaws, ordinances or regulations. Mr. and Mrs. Gilbert claims that they have made a reasonable request. Mr. and Mrs. Gilbert gave the Town abundant opportunity to accommodate them before seeking relief in another judicial forum. Mr. and Mrs. Gilbert sought to adjust the zoning code before challenging a zoning decision

in court. The Town has not shown that Mr. and Mrs. Gilbert's requested Zoning Variance would have disrupted the character of their neighborhood or that the Town would have suffered any financial or other administrative burden if their Zoning Variance application was approved to provide them reasonable accommodation. In addition, the Town had not/has not engaged in any interactive process with Mr. and/or Mrs. Gilbert or thier representatives to identify alternative means to provide reasonable accommodation and it had not/has not suggested any alternative reasonable accommodation. Instead, the Defendants summarily denied Complainants' application for Variance stating, "Not reasonable accommodation."

12. The aforesaid actions and omissions on the part of the Defendants were taken with malice, and were intentional in that the actions were willful, wanton and/or were taken in reckless disregard of the Commission's and the Relator's rights.

13. As a result of the Defendants' discrimination in violation of state laws as hereinabove set forth, the Commission and the Relator have and will continue to suffer damages including, but not limited to, civil penalties, punitive damages, and attorney's fees.

WHEREFORE, the Plaintiff requests:

1. An award of damages pursuant to CONN. GEN. STAT. § 46a-86 and 46a-89(b)(2);
2. An award of a civil penalty, equitable relief and punitive damages pursuant to CONN. GEN. STAT. § 46a-89(b);
3. An award of costs and reasonable attorney's fees pursuant to CONN. GEN. STAT. § 46a-86(c);
4. An award of interest on all amounts owed until the date of payment pursuant to CONN. GEN. STAT. § 37-3a; and

5. An order requiring all Defendants to cease and desist from violating Conn. Gen. Stat. § 46a-64c, et seq. and all other relevant statutes.
6. Such other relief as is just and proper.

Respectfully submitted,

COMMISSION ON HUMAN RIGHTS AND
OPPORTUNITIES EX REL. CHRISTIAN T.
GILBERT AND ABIGAIL T. GILBERT

PLAINTIFF,

BY: 

Alix Simonetti, Human Rights Attorney III
Commission on Human Rights
and Opportunities
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STATE OF CONNECTICUT

COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

CHRISTIAN T. GILBERT
ABIGAIL T. GILBERT

Complainants

v.

TOWN OF WALLINGFORD AND
ITS ZONING BOARD OF APPEALS

Respondent

: CHRO NO.: 1850189

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CHRO NO.: 1850190

DATE: MARCH 6, 2019

NOTICE OF ELECTION OF A CIVIL ACTION

Notice is hereby provided that the Respondent in the above-captioned matters elects a civil action in the Superior Court pursuant to Conn. Gen. Stat. § 46a-83(g)(2) in lieu of an administrative hearing. This Notice is being filed in response to the Final Investigative Report – Finding of Reasonable Cause prepared in connection with these matters dated February 21, 2019.

WHEREFORE, the Respondent elects a civil action in the Superior Court.

RESPONDENT,
TOWN OF WALLINGFORD AND
ITS ZONING BOARD OF APPEALS

By /s/ Melinda A. Powell

Robin B. Kallor
Melinda A. Powell
Rose Kallor, LLP
750 Main Street, Suite 1108-3
Hartford, CT 06103
(860) 361-7999
(860) 270-0710 (fax)
Juris No.: 439334
Email: rkallor@rosekallor.com
mpowell@rosekallor.com

RESPONDENT'S CERTIFICATION OF MAILING FORM

CHRO NO.: 1850189 and 1850190

I certify that a copy of this document was or will immediately be mailed or delivered electronically or non-electronically on March 6, 2019 to all attorneys and self-represented parties of record and to all parties who have not appeared in this matter and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery.

Ralph S. Keen, Esq.
Keen & Matney, LLC
20 Batterson Park Road, Suite 130
Farmington CT 06032
Via Email rsk@keanandmatney.com

/s/ Melinda A. Powell
Melinda A. Powell

RETURN DATE: July 23, 2019

COMMISSION ON HUMAN RIGHTS AND	:	SUPERIOR COURT
OPPORTUNITIES EX REL.	:	
ABIGAIL T. GILBERT AND	:	
CHRISTIAN T. GILBERT	:	
	:	JUDICIAL DISTRICT OF NEW HAVEN
	:	
v.	:	AT MERIDEN
	:	
TOWN OF WALLINGFORD, ZONING	:	
BOARD OF APPEALS	:	May 8, 2019

AFFIDAVIT OF COMMISSIONER OF THE
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

I, Edward Mambruno, of Hartford, Connecticut, being first duly sworn, hereby depose and say:

5. I am over the age of eighteen years and I understand and believe in the obligation of an oath.

6. I am a Commissioner of the Commission on Human Rights and Opportunities (CHRO), having been appointed by the Governor pursuant to CONN. GEN. STAT. § 46a-52.

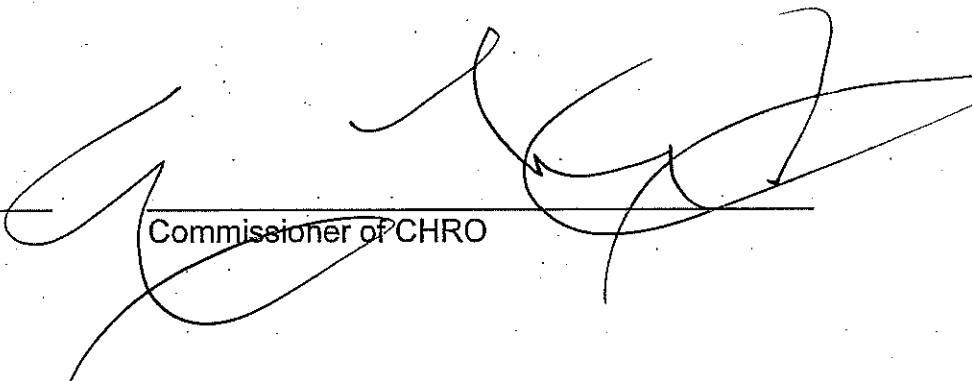
7. I am familiar with CHRO Complaint Nos. 1850189 and 1850190, filed with the CHRO on June 29, 2018, by Abigail T. Gilbert and Christian T. Gilbert against the Town of Wallingford Zoning Board of Appeals.

8. Pursuant to a vote taken at the May 8, 2019 CHRO Commission meeting, the Commission authorizes the Legal Division to institute an action against the Town of

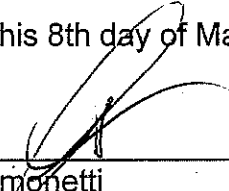
Exhibit B

Wallingford Zoning Board of Appeals pursuant to CONN. GEN. STAT §46a-89(b) seeking
injunctive, equitable and other appropriate relief.

5/8/19
Date


Commissioner of CHRO

Subscribed and sworn to before me on this 8th day of May 2019.


Alix Simonetti
Commissioner of the Superior Court

RETURN DATE: July 23, 2019

COMMISSION ON HUMAN RIGHTS AND
OPPORTUNITIES EX REL.

ABIGAIL T. GILBERT AND
CHRISTIAN T. GILBERT

v.

TOWN OF WALLINGFORD, and its
ZONING BOARD OF APPEALS

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: JUDICIAL DISTRICT OF NEW HAVEN
:
:
: AT MERIDEN
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:
:
: May 31, 2019

STATEMENT OF AMOUNT IN DEMAND

The amount, legal interest, or property in demand exceeds \$15,000, exclusive of
interest and costs.

Respectfully submitted,

COMMISSION ON HUMAN RIGHTS AND
OPPORTUNITIES EX REL. CHRISTIAN T.
GILBERT AND ABIGAIL T. GILBERT

PLAINTIFF,

BY:


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